

CONTESTED CASES

March 2015

Centennial Medical Center
CN1407-032A
Docket No. 25.00-T.B.A.

Saint Thomas Midtown Hospital and Saint Thomas West Hospital have requested a hearing before the Tennessee Health Services and Development Agency (“the HSDA”) to contest the approval of certificate of need application No. CN1407-032A. Centennial Medical Center, a 657 licensed bed hospital located in Nashville, is seeking approval to renovate its main emergency department, develop a Joint Replacement Center of Excellence, and to increase the hospital’s licensed bed complement. The project includes approximately 89,318 square feet of renovation, 84,123 square feet of new construction, and the addition of 29 licensed beds. Saint Thomas Midtown Hospital and Saint Thomas West Hospital are opposed to the Joint Replacement Center of Excellence.

The project does not involve the initiation of new health care services or acquisition of major medical equipment. The hospital’s acute care complement will increase from 657 to 686 licensed beds. The estimated project cost is \$96,192,007.

The contested case has been set for June 9 – 12, 2015.

Warren L. Gooch, Esq. of Kramer Rayson, LLP represents Saint Thomas Midtown Hospital and Saint Thomas West Hospital

Jerry W. Taylor, Esq. of Stites & Harbison, PLLC represents Centennial Medical Center

East Tennessee Radiation Therapy Services
CN1108-030AD
Docket No. 25.00-115208J

Covenant Health has appealed the *Approval* of a CON for the acquisition of a Linear Accelerator; the initiation of outpatient radiation therapy services; and the establishment of an ambulatory surgical treatment center (ASTC) limited to radiation therapy services in Knox County.

The contested case was heard January 14 – 18 and 24 – 25, 2013. The Administrative Judge entered an Initial Order *Denying* the CON application on 5/30/13. After receipt of written arguments from ETRTS and Covenant Health and oral arguments at the HSDA’s November 2013 meeting, the HSDA issued a Final Order *Approving* the CON application.

Covenant Health appealed the Final Order to the Davidson County Chancery Court, which overturned the HSDA’s Final Order Approving the CON application. The Davidson County Chancery Court has stayed the effect of its Order, pending resolution of ETRTS’ appeal to the Tennessee Court of Appeals; this means ETRTS may continue operation pending resolution. A date has not been set for the hearing of this appeal.

W. Brantley Phillips, Jr., Esq. and Russell S. Baldwin, Esq. of Bass, Berry & Sims represent East Tennessee Radiation Therapy Services

Dan H. Elrod, Esq., Brian Jackson, Esq., Sarah Lodge Tally, and Travis B. Swearingen, Esq. of Butler Snow represent Covenant Health

Maxim Healthcare Services
CN1405-015A
Docket No.: T.B.A.

Gentiva Health Services, Inc. has appealed the *Approval* of a CON for the establishment of a home health agency for Carter, Johnson, Sullivan, Unicoi, and Washington counties.

The contested case has been set for July 6 - 9, 2015; however, it appears the matter will be resolved with no change to the CON.

Byron R. Trauger, Esq., Paul W. Ambrosius, Esq. represent Maxim Healthcare Services

Kim Looney of Waller Lansden represents Gentiva Health Services, Inc.

SBH-Kingsport, LLC
CN1312-050D
Docket No.: 25.00-126908J

SBH-Kingsport, LLC has appealed the Denial of its application for the establishment of a 72 bed free standing mental health hospital and initiation of inpatient psychiatric and substance abuse services. The proposed mental health hospital would consist of 28 inpatient beds for psychiatric care for children ages 5-17, 18 inpatient beds for adult psychiatric care for adults ages 18-64, 16 inpatient beds for geropsychiatric care for ages 55+, and 10 adult chemical dependency beds. The proposed project would accept voluntary and/or involuntary admissions.

The contested case has been set for July 27-31, 2015

William H. West, Esq. of Baker Donelson represents SBH-Kingsport, LLC
Dan H. Elrod, Esq. of Butler Snow represents Woodridge Psychiatric Hospital

Tri-Cities Holdings, LLC d/b/a Trex Treatment Center
CON #1303-005D
Docket No.: 25.00-122076J

Tri-Cities Holdings, LLC d/b/a Trex Treatment Center has appealed the *Denial* of its application for the establishment of a nonresidential substitution-based treatment center for opiate addiction in Johnson City.*

A hearing date had not been set in the contested case due to Petitioner's urging, over HSDA counsel's opposition. In March 2014, HSDA counsel's Motion to Set was granted over Petitioner's objection, and a hearing date had been set for 7/29/2014 through 8/1/2014.

The ALJ revoked James A. Dunlap, Jr.'s special permission to appear in this TN proceeding due to his conduct (not detailed here), and Petitioner appealed said revocation to the Davidson County Chancery Court. Petitioner also sued the Secretary of State's Office in Federal Court over the revocation order, resulting in a new ALJ being assigned to the case. Jim Higgins, Esq. is now counsel of record. The new ALJ continued the trial to 9/2/2014 through 9/5/2014, to permit the Davidson County Chancery Court the opportunity to rule on Petitioner's appeal of the revocation. Since the Chancery Court had indicated resolution of the Interlocutory appeal of revocation of James A. Dunlap, Jr.'s special permission to appear would likely not be had by 9/2/2014, Agency counsel and Petitioner's counsel requested the matter be continued, with a new trial date set once word is received from the Chancery Court. Upon the Chancery Court's December 2014 issuance of an order upholding the revocation of Mr. Dunlap's special permission to appear in this Tennessee matter, Petitioner requested a postponement of the contested case until the Tennessee Court of Appeals rules on the issue; the ALJ granted Petitioner's request.

* Tri-Cities Holdings, LLC d/b/a Trex Treatment Center has also filed an action in Federal Court against the Health Services and Development Agency, alleging the denial of its application constitutes violations of the Americans with Disabilities Act and the Rehabilitation Act. Johnson City is a co-defendant. In April 2014, the Federal Court dismissed the RA claim and stayed the hearing of the ADA claim(s) until the administrative appeal is resolved. TCH has appealed that decision. Petitioner has filed an appeal with the 6th Circuit.

*Tri-Cities Holdings, LLC d/b/a Trex Treatment Center has also filed an action in Federal Court against the Tennessee Department of Mental Health and Substance Abuse Services, alleging the statutorily mandated report detailing how its application fails to satisfy Tennessee law constitutes violations of the Americans with Disabilities Act and the Rehabilitation Act.

*Tri-Cities Holdings, LLC d/b/a Trex Treatment Center has also filed an action in Federal Court against the Tennessee Secretary of State, Administrative Procedures Division, and the previous ALJ, alleging violations of the Americans with Disabilities Act and the Rehabilitation Act.